

**DOCUMENT RESUME**

02045 - [A1052029]

[Protests against Responsibility of Firm Issued Certificate of Competency]. B-188468; B-188570. April 11, 1977. 2 pp.

Decision re: William Edward Vandiver; by Paul G. Deabbling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Army Armament Command, Rock Island, IL; Sigma Industries, Inc.

Authority: 15 U.S.C. 637, 637(d) (.). 4 C.F.R. 20. B-185390 (1975).

Two contractors protested an award to Sigma Industries, Inc., disputing the ownership of tooling equipment necessary to produce the procured binocular cases. Army's preaward survey recommended against the award on the grounds of financial responsibility. However, the SBA issued the firm a Certificate of Competency, and such determination will not be considered by GAO. (DJM)

02048

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*R. Martin  
Proc II*

**FILE:** B-188468, B-188570

**DATE:** April 11, 1977

**MATTER OF:** William Edward Vandiver and  
Bado Engineering

**DIGEST:**

Protests against responsibility of firm issued  
Certificates of Competency by SBA will not be  
considered by GAO.

William Edward Vandiver and Bado Engineering (Bado)  
protest the award of contracts for binocular cases  
to Sigma Industries, Inc. (Sigma) under requests for  
proposals (RFP) No. DAAA09-76-R-9153 and DAAA09-76-R-  
9450 issued by the U.S. Armament Command, Rock Island,  
Illinois (Army).

Based on the information submitted by the protesters  
to this Office, it appears that production of the binocular  
cases requires special tooling. The protesters contend  
that the tooling which Sigma intended to use was owned  
by Mr. Vandiver in whole or in part and is presently the  
subject of litigation involving Mr. Vandiver and others.  
The record is not clear as to whether Mr. Vandiver sub-  
mitted proposals for the procurements but he states that  
the Army will be held liable for any unauthorized use of  
the tooling by Sigma. Bado, which submitted proposals,  
contends that the tooling is in the possession of a  
creditor and that an award based on the availability to  
Sigma of such tooling is unfair to those offerors which  
would be required to purchase new tooling.

The Army has informally told this Office that the  
pre-award survey reports revealed that the tooling which  
Sigma intended to use was not that claimed by Mr. Vandiver  
but was new tooling to be bought from another company.  
The reports, however, recommended against awards to Sigma  
on the grounds that its credit made it doubtful whether  
the necessary tooling could be so purchased. The matters  
were referred to the Small Business Administration which  
issued Certificates of Competency (COC) pursuant to 15  
U.S.C. § 637. Awards were then made to Sigma.

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The threshold question is whether the issues presented here are properly reviewable by this Office under its Bid Protest Procedures. 4 C.F.R. § 20 (1976). We think not. The solicitations did not require use of the precise tooling to which the protesters refer. The timely availability to Sigma of the necessary tooling was initially for the consideration of the procuring official. Having found that Sigma was not responsible as to capacity or credit, Armed Services Procurement Regulation § 1-705.4 required that the procuring official refer the matters to the SBA and to accept the COCs as conclusive as to Sigma's capacity and credit. Under 15 U.S.C. § 637(b)(7) (1920) the SBA has the authority to issue or deny a COC and this Office has no authority to review an SBA determination. Zinger Construction Company, Inc., B-185390, December 16, 1975, 75-2 CPD 397. Inasmuch as Sigma was trying to buy tooling other than that claimed by Mr. Vandiver, we think the status of the tooling under dispute was not material or relevant to the SBA's determination even if, in fact, the SBA was not aware of the dispute between the protesters and the principals of Sigma and Vanbar.

Accordingly, the protests are dismissed.

  
Paul G. Dembling  
General Counsel